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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

BENJAMIN LEE URQHART,

Defendant and Appellant.

2d Crim. No. B220249
(Super. Ct. No. F429214)
(San Luis Obispo County)

Benjamin Lee Urqhart appeals a judgment entered after he expressly waived his constitutional rights and pleaded nolo contendere to possession of oxycodone and admitted suffering a prior serious felony strike conviction. (Health & Saf. Code, § 11350, subd. (a); Pen. Code, §§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d).)

A plea agreement provided that Urqhart would receive a prison term of two years, the prosecutor would dismiss the prior strike conviction, and Urqhart would be released from custody pending sentencing to visit his seriously ill father. Pursuant to *People v. Cruz* (1988) 44 Cal.3d 1247, 1254, footnote 5, Urqhart agreed that if he failed to return to court for sentencing, committed a new offense during his release, or used illegal drugs, the trial court would impose a second-strike sentence of up to six years.

Urqhart did not appear on the scheduled day for sentencing. When he did appear the following week, he tested positive for methamphetamine. The trial court denied Urqhart's motion to withdraw his plea and sentenced him to a prison sentence of

four years. The court awarded him 338 days of presentence custody credit and imposed an \$800 restitution fine and an \$800 parole revocation restitution fine. (Pen. Code, §§ 1202.4, subd. (b), 1202.45.) Upon the prosecutor's motion, the court dismissed a misdemeanor count of possession of a syringe, and an allegation of service of a prior prison term. (Health & Saf. Code, § 11364; Pen. Code, 667.5. subd. (b).)

We appointed counsel to represent Urqhart in this appeal. After counsel's examination of the record, he filed an opening brief raising no issues.

On May 17, 2010, we advised Urqhart that he had 30 days within which to personally submit any contentions or issues that he wished to raise on appeal. We have not received a response from him.

We have reviewed the entire record and are satisfied that Urqhart's attorney has fully complied with his responsibilities and that no arguable issue exists. (*People v. Wende* (1979) 25 Cal.3d 436, 441.)

The judgment is affirmed.

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GILBERT, P.J.

We concur:

YEGAN, J.

COFFEE, J.

John A. Trice, Judge

Superior Court County of San Luis Obispo

Richard B. Lennon, under appointment by the Court of Appeal, for
Defendant and Appellant.

No appearance for Plaintiff and Respondent.